IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23/10/2002

CORAM

THE HONOURABLE MR.JUSTICE V.S.SIRPURKAR
AND
THE HONOURABLE MR.JUSTICE F.M.IBRAHIM KALIFULLA

WRIT PETITION NO.37851 OF 2002
AND
W.P.M.P.NOs. 56783 & 56784 OF 2002

C. Krishnapillai .. Petitioner

-Vs-

1. Director General of Police,
Chennai-4.

2. The Superintendent of Police,
Tirunelveli Dist., Tirunelveli.

3. Tamil Nadu Administrative Tribunal,
rep. by its Registrar,
Chennai. .. Respondents

For Appellants :: Mr.R.Karuppan

For Respondents :: ----

Prayer: This Writ Petition is filed under Article 226 of the Constitution, praying for issuance of Writ of Certiorarified Mandamus, for the reliefs as stated therein.

:ORDER

F.M.IBRAHIM KALIFULLA, J.
The petitioner has come forward with this Writ Petition against the order of the Tamil Nadu Administrative Tribunal dated 30-7-2002 in O.A.No.8867 of 1998, in and by which, the Tribunal declined to quash the Charge Memo dated 26-8-1997 issued to the petitioner.
2. Under the Charge Memo dated 26-8-1997, the petitioner, while working as Inspector of Police at Kanyakumari Circle, during the period 2-3-1990 to 20-3-1991, is alleged to have committed certain delinquencies, for which, the following Charges were levelled against him.

"Charge No.I:
That the said Thiru C.Krishna Pillai, Deputy Superintendent of Police, while functioning as Inspector of Police, Kanyakumari Circle during the period from 2.3.1990 to 20.3.1991 has committed the delinquency of having recorded the recovery of the stolen property viz., only 1 17 grams of gold jewels as against the actual recovery of the stolen property of gold jewels of 123.400 grams concerned in the theft cases in Nagercoil Central Crime Station Crime No.297/88 u/s 380 IPC, Suchindrum Police Station Cr.Nos.232/89 u/s 457, 380 IPC, 32/90 u/s 380 IPC, and Eathamozhy P.S.Cr.No.179/89 u/s 457 and 380 IPC and thus misappropriated 6.400 grams of gold jewels from 9.7.1990 to 30.7.1990 with the connivance of Thiru P.Duraimoni, Sub-Inspector of Police formerly of Kanyakumari Police Station.
"Charge No.II:
That during the aforesaid period land while functioning in the aforesaid office, the said Thiru C.Krishna Pillai, Deputy Superintendent of Police has committed the delinquency of having demanded an illegal gratification and accepted a sum of Rs.7000/- from Ayyappan s/o Ankappan Asari, Thiruvithancode along with his motor kcycle TN-74/1095, a sum of Rs.500/- from one Ramesh s/o Nagalingam Asari, Nagercoil and a sum of Rs.1300/- from Nainar s/o Ankappan Asari with an aggregate total of Rs.8800/- during the period from 9.7.1990 to 30.7.1990 (i.e.) during the course of recovery of case properties with an intention of not taking action against them u/s 411 IPC with the connivance of Thiru P.Duraimani, Sub-Inspector of Police formerly of Kanyakumari Police Station."

3. The list of documents to be relied upon in support of the Charges, as well as, the list of witnesses were also annexed as Annexure (iii) and (iv) to the above said Charge Sheet. The petitioner submitted his explanation on 10-9-1998. Thereafter, when an enquiry was ordered to be held, the petitioner participated in the enquiry. In the course of the enquiry, the petitioner appeared to have asked for certain documents and also wanted to cross examine the Co-delinquent, namely, Thiru Doraimani, Sub Inspector of P olice and with regard to the said issue, as the petitioner was not satisfied with the stand of the Enquiry Officer, came forward with the present O.A. before the Tribunal, wherein the petitioner wanted the Charge Memo to be set aside.
4. In the Original Application, the only grievance expressed by the petitioner was with regard to the manner in which, the enquiry was proceeded with by the Enquiry Officer against the petitioner. The O.A. was resisted by respondents 1 and 2. On 30-7-2002, the said O.A. was heard by the Tribunal and on finding the limitations in interfering with the Charge Memo issued to the Delinquent Officer, and taking note of the gravity of the charges levelled against the petitioner while working as a responsible officer in the police force, the Tribunal was of the view that there was no scope to interfere with the Charge Memo and accordingly dismissed the O.A. Aggrieved against the said order of the Tribunal, the petitioner has come forward with the Writ Petition.
5. Thiru R.Karuppan, learned counsel appearing for the petitioner in the first instance, contended that the Tribunal disposed of the O. A. without hearing the petitioner. According to the learned counsel, on 30-7-2002, when the O.A. was posted in the list and at the time when it was

taken up for hearing, the petitioner's counsel could not be present before the Tribunal to make his submissions and that the Tribunal, nevertheless passed orders dismissing the O.A., making it appear as though the order was passed in the presence of the counsel for the petitioner. In other words, according to the learned counsel, the O.A. came to be dismissed 'ex parte' and therefore, on that score alone, the order impugned is liable to be set aside.
Alternatively, the learned counsel would contend that the petitioner had very many contentions to be urged before the Tribunal in regard to the shortcomings relating to the Charge Memo issued to the petitioner, such as enormous delay involved in issuing the Charge Memo, the order of the Criminal Court in respect of the Charges in relation to the very same issue involved in the departmental proceedings which ended in acquittal and above all, in regard to the first Charge, the party who is stated to have lost the jewels never came forward with any complaint alleging that there was shortage in the weighment of the jewels which were returned back to him, while, in regard to the second Charge of ' bribe', since necessary criminal proceedings were launched against the concerned accused, there was no scope at all to contend that the petitioner could have demanded any bribe in order to let off the accused without proceeding against them. The learned counsel would therefore, contend that when such valid grounds were available to the petitioner, while attacking the validity of the Charge Memo issued to him, this Court in exercise of its powers under Article 226 could in any event, consider the challenge of the petitioner to the Charge Sheet impugned in the O.A. by entertaining this Writ Petition. The learned Counsel relied upon 1985 Wr.L.R. 522 (V.S.RAMANARAYAN versus THE FOOD CORPORATION OF INDIA, REP. BY ITS ZONAL MANAGER, MADRAS); 1999 (3) SCC 67 9 (CAPT.M.PAUL ANTHONY versus BHARAT GOLD MINES LTD. & ANOTHER); AND 1995 (1) SLR 700 (STATE OF PUNJAB & OTHERS versus CHAMAN LAL GOYAL) in support of his above said contentions.
6. Having heard Mr.R.Karuppan, learned counsel for the petitioner at length, we are of the considered view that none of the contentions raised by the learned counsel merit acceptance. In the first place, it is well settled principle that the statements contained in the order of a Court cannot be contradicted. In the light of the above said principle, in the absence of any acceptable valid reasons, the stand of the petitioner that the Tribunal proceeded to dispose of the O.A. on 30-7-2002 in the absence of the petition er cannot be accepted. A perusal of the impugned order makes it clear that both parties were represented by counsel and there is no indication in the order that the learned counsel was absent at the time of hearing. If really, the impugned order was passed by the Tribunal 'ex parte', nothing prevented the petitioner to move the Tribunal for getting appropriate relief.
Therefore, there is no scope to doubt the proceedings of the Tribunal in so far as it related to the hearing of the petitioner's case before passing of the order impugned herein. We are, therefore, unable to accept the said contention of the petitioner raised in this Writ Petition.
7. The next contention of the learned counsel for the petitioner, namely, that the Charge Memo was liable to be interfered with on the ground of inordinate delay in issuance of it is concerned, hereagain, it will have to be held that even going by the decisions relied on by the learned counsel for the petitioner, it cannot be held that whenever a plea of delay is put forth as a ground for quashing the Charges, that by itself would be sufficient to quash the Charge Memo. It all depends upon the nature of the offence and the

interest of justice which is paramount to determine as to whether a Charge Memo should be interfered with at all in the given circumstances. The learned counsel relied upon 1985 Wr.L.R. 522 (V.S.RAMANARAYAN versus THE FOOD CORPORATION OF INDIA, REP. BY ITS ZONAL MANAGER, MADRAS) in support of his contention that on the ground of delay in the issuance of the Charge Memo, the same is liable to be interfered with. However, in the Judgment of the Hon'ble Supreme Court reported in 1995 (1) SLR 700 (STATE OF PUNJAB & OTHERS versus CHAMAN LAL GOYAL), the legal position has been laid down in no uncertain terms, in paragraph 12 and 14 which is to the following effect:

"12. The principles to be borne in mind in this behalf have been set out by a Constitution Bench of this Court in A.R.Antulay V. R.S. Nayak and another (1992(1) SCC 225). Though the said case pertained to criminal prosecution, the principles enunciated therein are broadly applicable to a plea of delay in taking the disciplinary proceedings as well. In paragraph 86 of the judgment, this Court mentioned the propositions emerging from the several decisions considered therein and observed that "ultimately the court has to be balance and weigh the several relevant factors – balancing test or balancing process – and determine in each case whether the right to speedy trial has been denied in a given case". It has also been held that, ordinarily speaking, where the court comes to the conclusion that right to speedy trial of the accused has been infringed, the charges, or the conviction, as the case may be, will be quashed. At the same time, it has been observed that that is not the only course open to the court and that in a given case, the nature of the offence and other circumstances may be such that quashing of the proceedings may not be in the interest of justice. In such a case, it has been observed, it is open to the court to make such other appropriate order as it finds just and equitable in the circumstance of the case.

"13. ....

"14. The High Court had relied upon the decision of this Court in State of Madhya Pradesh V. Bani Singh and Anr. (1990 (Suppl.) S.C.C.73 8) on the question of delay. That was a case where the charges were served and disciplinary enquiry sought to be initiated after a lapse of twelve years from the alleged irregularities. From the report of the judgment, the nature of the charges concern ed therein also do not appear. We do not know whether the charges there were grave as in this case. Probably, they were not. There is another distinguishing feature in the case before us; by the date of the judgment of High Court, the major part of the enquiry was over. This is also a circumstance going into the scales while weighing the factors for and against. As stated herein above, wherever delay is put forward as a ground for quashing the charges, the Court has to weigh all the factors, both for and against the delinquent officer and come to a conclusion which is just and proper in the circumstances. In the circumstances, the principle of the said decision cannot help the respondent."

(Emphasis applied)

8. Applying the above said principle to the facts of this case, it can be safely concluded that the charges laid down against the petitioner sufficiently disclose that such serious charges levelled against a responsible Police Officer cannot be just like that interfered with, merely, on the ground of the alleged delay in issuance of the Charge Sheet. The Charges, as rightly

held by the Tribunal, if proved, would result in imposition of very severe punishment on the petitioner. The respondent-State will not be in a position to repose confidence in the petitioner who has to give protection to the public at large as a responsible Police Officer, as against vulnerable persons who will be working against the general interest of the public. Therefore, it is futile on the part of the petitioner to contend that in view of the delay involved in the issuance of the Charge Memo, the same is liable to be set aside on that score alone.

9. The petitioner's reliance on the judgment of the Division Bench of this Court reported in 1985 Wr.L.R.522 cannot also be of any assistance to the petitioner, inasmuch as, that was a case where in the facts and circumstances of that case where the Charge Memo came to be issued to the delinquent after a lapse of six years to the date of the incident, the Division Bench, on finding that the enquiry not having commenced and wherein, witnesses numbering about 22 were to be examined, and in the light of the fact whether the witnesses would be in a position to remember the events which happened six years before, was of the view that no purpose would be served by allowing further proceedings to go on pursuant to the issuance of the Charge Sheet after the delay of six long years. Whereas, in the case on hand, it is an admitted fact that after the issuance of the Charge Sheet, the petitioner was able to submit his explanation without any handicap. Further more, it is also the undisputed position that the petitioner participated in the enquiry which came to be held after the submission of the explanation to the Charge Memo and only in the enquiry, when he had certain grievances against the Enquiry Officer, he was obliged to approach the Tribunal by way of the present O.A. Therefore, it was never the case of the petitioner that the delay in the issuance of the Charge Memo caused any hindrance to the petitioner in putting forth his defence to the charges levelled against him. Therefore, since the petitioner was not put to any prejudice by virtue of the so called delay in the issuance of the Charge Memo and in the light of the seriousness of the Charges levelled against the petitioner, there is absolutely, no scope for interfering with the said Charge Memo solely on the ground of delay.

10. As regards the other contention of the petitioner with regard to the merits of the Charges is concerned, it is for the petitioner to put forth his defence in the best possible manner available to him. In the interest of the petitioner himself, we feel that we should not delve deep into the submissions made on behalf of the petitioner with regard to the merits of the misconduct, inasmuch as, the Disciplinary Authority is seized of the matter and moreover the enquiry is in the midway. Therefore, we refrain from going into the details of the said submission made on behalf of the petitioner.

11. The last contention of the petitioner is that he was acquitted by the Criminal Court in the private complaint preferred by one of the accused in regard to the very same issue and therefore, the departmental enquiry cannot be proceeded with. In support of the said contention, reliance was placed upon 1999 (3) SCC 679 (CAPT.M.PAUL ANTHONY versus BHARAT GOLD MINES LTD. & ANOTHER). At the outset, it will have to be stated that the said judgment cannot be applied to the facts of this case, inasmuch as, that was a case where, after a honourable acquittal in the criminal proceedings in respect of the very same set of charges with reference to which Disciplinary action was taken, the Honourable Supreme Court was pleased to hold as under in paragraphs 34 and 35.

"34. There is yet another reason for discarding the whole of the case of the respondents. As pointed out earlier, the criminal case as also the departmental proceedings were based on identical set of facts, namely, "the raid conducted at the appellant's residence and recovery of incriminating articles therefrom". The findings recorded by the enquiry officer, a copy of which has been placed before us, indicate that the charges framed against the appellant were sought to be proved by police officers and panch witnesses, who had raided the house of the appellant and had effected recovery. There were the only witnesses examined by the enquiry officer and the enquiry officer, relying upon their statements, came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case but the Court, on a consideration of the entire evidence, came to be the conclusion that no search was conducted nor was any recovery made from the residence of the appellant. The whole case of the prosecution was thrown out and the appellant was acquitted. In this situation, therefore, where the appellant is acquitted by a judicial pronouncement with the finding that the "raid and recovery" at the residence of the appellant were not proved, it would be unjust, unfair and rather oppressive to allow the findings recorded at the ex parte departmental proceedings to stand.

"35. Since the facts and the evidence in both the proceedings, namely, the departmental proceedings and the criminal case were the same without there being any iota of difference, the distinction, which is usually drawn as between the departmental proceedings and the criminal case on the basis of approach and burden of proof, would not be applicable to the instant case."

12. As against the above said set of facts involved in that case, in the case on hand, one of the accused who was involved in the incident is stated to have filed a private complaint against the petitioner in C.C.No.12 of 1997 and the said private complaint was dismissed by the Additional District Judge-Cum-Chief Judicial Magistrate, Nagercoil on 25-3-1999 on the ground that the complainant was not diligently prosecuting the proceedings and displayed total callousness and indifference in prosecuting the complaint preferred by him. It was on that score, the complaint came to be dismissed for non-prosecution under Section 204(4) Cr.P.C. That apart, on a perusal of the order of the Criminal Court and the Charge Memo dated 26-8-1997, we find that the Charges framed against the petitioner in the criminal complaint and in the Disciplinary proceedings are not identical.
13. In this context, it would be relevant to refer to the Judgment of the Honourable Supreme Court reported in JT 2000 (10) SC 195 (K. SREEDHARAN versus CHIEF SECURITY COMMISSIONER & OTHERS), wherein, the position has been stated as under.

".... His contention in the review proceedings centres round the departmental enquiry. An attempt is made to reargue the matter and submit that because he was acquitted by the Criminal Court, he could not be proceeded against departmentally. It is now well settled that if acquittal by criminal Court is not a clear one, but it is only by giving benefit of doubt, departmental enquiries on the same allegation against him, cannot be said to be barred. His acquittal was on the ground that the charge was not proved

beyond reasonable doubt. Hence, even on merits the review petition is liable to be dismissed and therefore, the review petition is dismissed both on the ground of not satisfactorily explained gross delay as well as on merits." (Emphasis applied)

The above said judgment is more appropriate to the facts of this case. In fact, the case on hand is still worse, where the complaint came to be dismissed for non-prosecution. We, therefore, prefer to follow the above said judgment and hold that the dismissal of the private complaint in C.C.No.12 of 1997 can have no impact in so far as the Charge Memo issued to the petitioner.

14. Therefore, looked at from any angle, we do not find any scope to interfere either with the Charge Memo dated 26-8-1997 issued to the petitioner or the order of the Tribunal dated 30-7-2002 in O.A.No.8 867 of 1998 which has been impugned in this Writ Petition. The Writ Petition, therefore, fails and the same is dismissed. No costs. Consequently, connected W.P.M.Ps. are closed.

Index: Yes
Internet: Yes
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